

WATER SUPPLY CONTRACT

This Contract is made between the COLORADO RIVER WATER CONSERVATION DISTRICT (herein the "River District"), a political subdivision of the State of Colorado acting by and through its Colorado River Water Projects Enterprise, and _____ (herein "Contractor") effective as of the date of the River District's execution hereof indicated below.

RECITALS

A. The River District is authorized to contract to deliver water for beneficial use from River District water projects pursuant to provisions of C.R.S. § 37-46-101, *et seq.* (herein "River District Organic Act").

B. [Options] The River District is the owner and operator of the Woldford Mountain Reservoir Project located on the Muddy Creek drainage near Kremmling, Colorado, having obtained necessary decrees from the District Court in and for Colorado Water Division No. 5 (herein "Water Court") and permits from governmental agencies, and the River District is entitled to deliveries of water from Ruedi Reservoir under its Contracts with the U.S. Bureau of Reclamation; [and/or] the River District is entitled to deliveries of water from Eagle Park Reservoir and Homestake Reservoir as a shareholder in the Eagle Park Reservoir Company.

C. The River District's Board of Directors has adopted a Water Marketing Policy, as revised on April 15, 2003, to provide for the use of water available from the River District's sources of supply pursuant to contracts, and that Water Marketing Policy is to be implemented through the River District's Water Projects Enterprise.

D. Contractor has a need for [Select one: retail or wholesale] water supply, demonstrated in its submittals to the River District pursuant to the Water Marketing Policy's contracting process, in the amount of _____ acre feet annually for [municipal/industrial or agricultural] purposes which beneficial uses will be accomplished by Contractor generally in the vicinity of _____ [check map or application] by [Select as appropriate: surface or ground water] diversions from or within the _____ River drainage [optional: tributary to the Colorado River].

E. Contractor has reviewed the Water Marketing Policy and is aware of the "Hydrology Assumptions" which are part of that Policy and is satisfied, based on its review and investigations, that Contractor legally and physically can make use for its intended purposes of the Contracted Water which is the subject of this Contract and that such use will comply with the Water Marketing Policy and the Project's permits and decrees.

DEFINITIONS

In this Contract certain terms will have definitions as stated below:

- The "River District" means the Colorado River Water Conservation District created and existing pursuant to the River District Organic Act defined in Recital A and acting by and through its Colorado River Water Projects Enterprise which is currently described and memorialized in the Resolution of the Colorado River Water Conservation District's Board of Directors dated January 17, 2001.
- The "Project[s]" means:
 - (a) The River District's "Colorado River Supply" from (1) Wolford Mountain Reservoir, for which storage water right decrees were obtained by the River District in Cases No. 87CW283, 95CW281 and 98CW237 District Court for Colorado Water Division No. 5, and for which additional storage water right decrees may be obtained in the future by the River District in other cases; and (2) the River District's contractual right to water deliveries from Ruedi Reservoir; [and]
 - (b) The River District's "Eagle River Supply" from Eagle Park Reservoir or Homestake Reservoir and other supplies available to the River District as a shareholder in the Eagle Park Reservoir Company.
- "Agricultural" means the use of water for commercial production of agricultural crops and livestock and other uses consistent with any right decreed for irrigation purposes, which uses are made on a parcel of land of at least ten acres.
- "Municipal and Industrial" means the use of water by individuals, cities, towns, public or quasi-public districts, private corporations, homeowners associations, or other entities for domestic, municipal, and miscellaneous related purposes as those terms are traditionally and commonly construed, including the use of water for purposes of producing or processing a non-agricultural product or service for sale, including without limitations, such uses as manufacturing, mining, milling, land reclamation, golf course irrigation, snowmaking, and non-hydroelectric power generation; [For Colorado River supplies only; and including the use of water for environmental mitigation purposes associated with such uses;] but excepting the agricultural use of water defined herein.
- "Contracted Water" means the water which is the subject of this Contract which is to be released and delivered by the River District and used by Contractor. The Contracted Water is _____ acre feet of Colorado River Supply and ____ acre feet of Eagle River Supply available during each Project Year during the term of this

Contract, subject to the provisions hereof, for Contractor's use without right of carryover of any amount not used in any Project Year.

- "Project Year" means a period of time from July 1 through and including the subsequent June 30.
- "Water Marketing Policy" means the River District's policy statement as revised and readopted April 15, 2003, and as the same may be amended in the future.
- [Edit as appropriate for source of supply.] [Colorado River only:] "Project Hydrology Assumptions" or "Hydrology Assumptions" means the document attached as Appendix "A" to the Water Marketing Policy adopted on December 1, 1995, [Eagle River only:] and the letter by Resource Engineering, Inc. titled "Eagle River Instream Flow Analysis" dated July 13, 1998 which was presented to the River District's Board of Directors on July 22, 1998.

AGREEMENTS

The foregoing Recitals and Definitions are incorporated herein as agreements between the River District and Contractor.

1. River District Water Delivery Obligations and Responsibilities.

- a. Delivery. The River District will deliver the Contracted Water at the outlet works of the Contracted Water's sources of supply into the receiving natural streams in quantities provided herein.

[Wholesale Service Alternative.] Unless otherwise agreed to by the River District's General Manager based upon written request of Contractor, the River District will make releases for Contractor, based upon Contractor's written schedule of anticipated demand, adjusted as necessary by the ongoing status of river administration vis-a-vis the priority status of Contractor's diversions. Contractor shall be solely responsible after delivery for the legal and physical delivery and use of the Contracted Water.

[Retail Service Alternative.] The River District shall deliver the Contracted Water at such rates and times as are required by the terms and conditions governing the substitute supply plan or plan for augmentation or exchange secured by the River District for Contractor's use of the Contracted Water.

- b. Delivery Contingencies. The River District's delivery of Contracted Water shall be subject to Contractor's payments pursuant to paragraph 3 below and the provisions for curtailment of deliveries in paragraph 5 below.
- c. Water Measurements. The River District shall measure at the outlet works of the Contracted Water's sources of supply all Contracted Water delivered from the account of Contractor and shall notify the Division Engineer of Colorado Water Division No. 5 of the date, time and amount of Contracted Water released and delivered pursuant to this Contract. Copies of such records shall be provided to Contractor upon its request therefor.
- d. Water Quality. The River District shall have no obligation to Contractor or any other person regarding and makes no warranties or representations to Contractor concerning the quality of Contracted Water delivered pursuant to this Contract by releases of raw water to natural streams.
- e. Maintenance of Facilities. The River District shall use its best efforts to maintain in good working condition the water storage and release facilities of the Contracted Water.
- f. Withholding of Delivery. The River District may withhold deliveries of Contracted Water in the event of Contractor's nonpayment for Contracted Water or any other breach of this Contract by Contractor. Such remedy shall not be the River District's exclusive remedy in the event of any such breach.
- g. Delivery from Primary or Alternate Sources. The River District will deliver the Contracted Water from the sources of [Colorado River and/or Eagle River] Supply described herein which will best meet the Contractor's legal need to satisfy calls by senior water rights or the Contractor's physical need for any direct delivery of Contracted Water to Contractor's diversions. Subject to meeting those objectives, the River District reserves the right to provide all or any of the Contracted Water to Contractor from alternate reservoirs for Contractor's use. Any releases from alternate facilities shall not diminish the supply of Contracted Water or impair Contractor's legal or physical ability to make use of Contracted Water or to meet its obligations under any judicial or administrative approval described in paragraph 2.d.
- h. [Retail service provision] Retail Service. The River District shall include Contractor's water diversions and related stream depletions which are based upon Contractor's use of its Contracted Water in a substitute supply plan and/or adjudicated plan for augmentation or exchange so as to provide for legal protection from the curtailment of such diversions to the extent possible given the relative

priority of Contractor's diversion rights and the location of Contractor's diversions and return flows in relation to the calls by downstream senior water rights. The River District's obligations to provide such services shall depend upon Contractor's cooperation with the River District as the River District may reasonably request to provide information and assistance, including testimony, needed for the administrative approval and operation of any substitute supply plan or judicial approval of any plan for augmentation or exchange. The River District makes no warranty that it will secure approval of such a plan but agrees to make its best efforts to do so.

2. Contractor's Water Use Obligations and Responsibilities.

- a. Scheduling of Use. Contractor [shall provide or has provided] the River District a preliminary written schedule of its anticipated monthly demands for Contracted Water during the [current or upcoming] Project Year. The schedule provided by Contractor [in its application for this Contract] shall serve as the schedule to be used until it is modified in a written notice given by Contractor to the River District [on or before June 1st annually], or as necessary in response to river administration of the Contractor's diversions. The schedule shall identify the volume of any Contracted Water anticipated by Contractor not to be needed by it during any particular Project Year. Contractor shall update said schedule periodically during the Project Year as conditions require and give the River District written notice of all such revisions.
- b. Carriage Losses. Contractor shall bear carriage losses, either five percent (5%) of delivery or such other amount as is determined by the Division Engineer for Colorado Water Division No. 5, from the point of delivery of Contracted Water to Contractor's point(s) of use and/or exchange or augmentation.
- c. Use Per Contract and Law. Contractor's use of Contracted Water shall in all instances be in accordance with the terms of this Contract and the Water Marketing Policy and in accordance with Colorado law concerning water rights and water use and all decrees related to the Contracted Water. Contractor is not authorized to apply for or secure any change in the water rights for or associated with any of the sources of supply of the Contracted Water.
- d. [Wholesale service provision.] Legal Approvals. Contractor shall at its sole expense adjudicate a plan or plans for augmentation or exchange and/or secure administrative approvals of any temporary substitute supply plans which are needed for Contractor to use its Contracted Water. [Optional: Contractor already has filed such an application in Water Court, Water Division No. ____, Case No. __CW__.] If Contractor intends to make any such [additional (leave in only if option above

applies] applications for any augmentation or exchange plan(s) or substitute supply plan(s), Contractor shall submit the proposed application to the River District within a reasonable time before Contractor proposes to file such application. The River District shall review for written approval such applications before they are submitted or filed, and the River District's approval shall not be unreasonably withheld. The River District may in its discretion become a co-applicant in the prosecution of any such applications for the purpose of protecting its water rights and related policies. Contractor shall cause to be included in any final decree of the Water Court a provision conditioning Contractor's use of the Contracted Water on the existence of a River District contract.

- e. Limitation on Disposition. Contractor shall not sublet, sell, donate, loan or otherwise dispose of any of its rights to this Contract or to Contracted Water without written notice to and the prior written approval of the River District. The River District's approval of such disposition shall be granted in all instances in which the Contractor is transferring the water system which supplies the Contracted Water, or a permanent transfer of the Contract is to be made to a successor in interest of Contractor by reason of the transfer of the title or other legal right to use the property served by the Contracted Water, or where the transfer is made to an entity such as a homeowners' association or special district created to serve the property originally represented to the River District to be served with the Contracted Water.
- f. Contractor's Water Rates. Contractor may charge its water customers who are supplied with Contracted Water such rates and charges as are permitted by Colorado law.
- g. Nondiscrimination. Contractor shall not discriminate in the availability of or charges for any water service or water supply made available pursuant to or based upon the Contracted Water on account of race, color, religion, or national origin or any other criteria prohibited under state or federal law.
- h. Accounting of Use. Contractor shall maintain an accounting of its use of all water used or supplied by Contractor on form(s) acceptable to the River District specifically for the purpose of enabling the River District to prove the use of River District Project water rights and to administer and operate the Project and water right decrees and/or administrative approvals related to Contractor's use of Contracted Water. Contractor shall submit its accounting forms and records to the River District promptly upon request and shall assist the River District as it may reasonably request in presenting and/or verifying such evidence of use in court or before administrative agencies by testimony of Contractor or its authorized and informed officers or agents.

[Annual Basis Payment Version—Prices stated are Wholesale; revise for Retail contract if applicable: \$155 af/Colorado; or \$260 af/Eagle blend]

3. Contractor's Payments.

- a. In addition to the application fee already paid by Contractor, in order for the River District's delivery obligation to become effective immediately Contractor shall pay to the River District on the execution of this Contract the total sum of \$_____, being \$_____ for each acre foot of _____ acre feet of Colorado River Supply and \$_____ for each acre foot of _____ acre feet of Eagle River Supply (the Contracted Water), for the first [full or partial] Project Year (July _____ through June _____). In the alternative, by giving the River District written notice within thirty (30) days of execution of this Contract, Contractor may defer delivery rights and obligations until the next Project Year (July ____ through June ____) provided that Contractor pays such [or the adjusted amount as provided below,] sum on or before April 1, ____ [or for post April 1st contracts: upon execution of this Contract]. [Option: Contractor has paid the River District \$_____, being \$_____ per acre foot of [Colorado River Supply or Eagle River Supply] for upcoming Project Year _____ through _____. It is understood that the River District's delivery obligation shall become effective upon execution of this contract or on July 1, _____.] Thereafter, on or before April 1st of each year Contractor shall pay to the River District that amount, or the adjusted amount as provided below, for the next upcoming Project Year.
- b. It is understood that the base price of \$125.00 per acre foot of Colorado River Supply Contracted Water and \$451.00 per acre foot of Eagle River Supply Contracted Water includes an amount charged for Project operation and maintenance ("O&M") in the amount of \$25.00 for Colorado River Supply and \$51.00 for Eagle River Supply. On April 1, 2008 and every five years thereafter those O&M charges shall be adjusted based on the cumulative change in the Boulder-Denver Metro Area Consumer Price Index ("All Items") and Contractor's subsequent annual payments for Contracted Water shall be adjusted accordingly.
- c. [Delete if Paragraph 7 is deleted] Contractor's payments also shall be adjusted by decreasing the future annual charges per acre foot of Contracted Water by \$25.00 upon Contractor's implementation of paragraph 7 below to the River District's satisfaction.

[Upfront Payment Version] Contractor's Payments. Upon execution of this Contract, Contractor shall pay to the River District \$_____ being \$_____ for each acre foot of Contracted Water plus [\$25.00: Colorado Supply; and \$51.00: Eagle

River Supply] for each acre foot of Contracted Water, which amount represents Project Operation and Maintenance ("O&M"). Thereafter, on or before each April 1st during the term of this Contract, Contractor shall pay the River District the O&M amount, as it may be adjusted as provided below, for the next upcoming Project Year. The annual O&M payment of Contractor shall be adjusted on April 1, 2008 and every five (5) years thereafter based on the cumulative change in the Boulder-Denver Consumer Price Index ("All Items").

4. Contract Term.

- a. Subject to the provisions of subparagraph 6.b below, the initial term of this Contract shall be for a period of up to forty (40) years from the date of the execution of this Contract.

[Optional subparagraph 4.a for interim contracts]: The term of this Contract shall be for a period of _____ year(s).

[Subparagraphs 4.b and 4.c are included only for/with 40-year version of subparagraph 4.a.]

- b. Upon the completion of the initial term and subject to the provisions of subparagraph 6.b below, Contractor shall have the right to renew this Contract for a secondary term of thirty-five (35) years, which shall commence upon the expiration of the initial term. If Contractor desires to so renew this Contract, it shall provide the River District written notice of its intention to do so at least ninety (90) days prior to the expiration of the initial term of this Contract. Thereafter, and prior to the expiration of the initial term, the River District and Contractor shall execute a supplemental agreement of renewal in a form mutually acceptable to the River District and Contractor. If such notice of intention to renew is not provided and such supplemental agreement is not executed, no renewal term shall commence.
- c. Upon renewal, the following terms of this Contract shall be subject to renegotiation:
 - i. The charge for and adjustment of operation and maintenance may be increased or modified based upon the adequacy of the charge and its modification under this Contract to cover the River District's operation and maintenance costs actually experienced during the initial term.
 - ii. The need or appropriateness of any conservation plan concerning Contractor's use of Contracted Water as determined by the River District.

5. Water Shortage. In the event that the River District is unable, because of either legal or physical reasons, to deliver any or all of the full amount of water contracted from the Project, including the Contracted Water, the River District reserves the right to apportion the Project's available water among its several contractors, including Contractor, in the manner provided in Section 6 of the Water Marketing Policy.
6. Contract Termination.
 - a. Termination by River District.
 - i. The River District may terminate this Contract for any violation or breach of the terms of this Contract by Contractor, including Contractor's failure to pay timely any sum or amount due under this Contract within thirty (30) days after receiving written notice from the River District of such breach.
 - ii. The River District also may terminate this Contract if, in its discretion any judicial or administrative proceedings initiated by Contractor as contemplated in subparagraph 2.d above, threaten the River District's authority to contract for delivery of Project Water or the River District's water rights, permits, or other interests associated with the Project.
 - iii. The River District may terminate this Contract if its legal ability to deliver Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of permits, decrees or other authorizations which are needed to deliver the Contracted Water.

[Include subparagraphs 6.b and c only for Annual Basis Payment Contract.]

- b. Termination by Contractor:
 - i. Contractor may terminate this Contract in its entirety for any reason by giving the River District at least thirty (30) days advance notice prior to the due date of Contractor's next annual payment.
 - ii. Every fifth year after the year in which this Contract is executed, Contractor may partially terminate this Contract as to the amount of Contracted Water by giving the River District at least thirty (30) days advance notice prior to the due date of Contractor's next annual payment. Partial termination by Contractor shall not exceed more than fifty percent (50%) of the amount of Contracted Water which is then under contract.

- iii. Within thirty (30) days of final approval of the Water Court application contemplated by paragraph 2.d, Contractor may by written notice to the River District partially terminate this Contract as to the amount of Contracted Water which is not needed under that approval.
 - c. Notice of Termination to Affected Officials. The River District will notify the Division Engineer and any other appropriate governmental officials of any full or partial contract termination except for any partial termination under subparagraph 6.b(iii).
 - d. [Alternate 6.b. only for Upfront Payment Contracts.] Adjustment of Payments. If the River District terminates this Contract under subparagraph 6.(a)(ii) or (iii), it shall repay to Contractor a portion of the Contractor's payment which represents the *pro rata* amount of the remaining term of the Contract (40 years or 35 years).
7. [Include paragraph 7 only for Annual Basis Payment Contract for a Government Entity.] Conversion to Upfront Price Equivalent. If within three years after the date of the execution of this Contract, Contractor provides to the River District documentary evidence satisfactory to the River District that Contractor has the legal capacity and authority to make this Contract as a binding multi-year financial obligation of Contractor for the full term stated in paragraph 4 above, and that Contractor has taken all necessary and appropriate actions to so bind itself, Contractor's payment shall be adjusted as provided in subparagraph 3.c above and subparagraph 6.b(1) shall become null and void.
8. Miscellaneous/Standard Provisions.
- a. Notices.
 - i. All notices required or appropriate under or pursuant to this Contract shall be given in writing mailed or delivered to the parties at the following addresses:

River District:

Colorado River Water Conservation District
P. O. Box 1120
201 Centennial Street, Suite 204
Glenwood Springs, Colorado 81602
Attention: Secretary / General Manager
Phone: (970) 945-8522
Fax: (970) 945-8799

Contractor:

with copy to:

- ii. Either party may, by written notice given in accordance with this provision, change the address to which notices to it shall be mailed or delivered.
- b. Amendments. No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless documented in writing which is approved and executed by both parties with the same formality as they have approved and executed this Contract.

COLORADO RIVER WATER CONSERVATION
DISTRICT acting by and through its Colorado River
Water Projects Enterprise

DATE: _____

By: _____
Paul J. Ohri, President

ATTEST:

Richard Eric Kuhn, Secretary

CONTRACTOR:

By: _____

(Name)
(Title)

[illegible]

Witness my hand and official seal. My Commission Expires:

[illegible]

Witness my hand and official seal. My Commission Expires: _____

[illegible]

Witness my hand and official seal. My Commission Expires: _____

F:\Water Marketing\Forms-Master\Contract\Contract-July 2003.wpd